
IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

LLOYD L. MOTT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

No. 21,188 ✓

On Appeal from the Judgment of
The United States District Court
For the District of Arizona

BRIEF FOR APPELLEE

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I.

JURISDICTIONAL STATEMENT OF FACTS

On March 16, 1966, an Indictment was returned by the Federal Grand Jury sitting at Tucson, Arizona (Transcript of the Record, Volume I, Item 1). (Hereinafter Volume I of the Transcript of Record will be referred to as "RC," Volume II of the Transcript of Record, i.e., the Reporter's Transcript, will be referred to as "RT", the number following will refer

to the page and the number following "L" will refer to the line. Appellant will be referred to as Mott.)

The Indictment charged Mott with having conspired from on or about February 22, 1966, and continuing thereafter until on or about February 24, 1966, in the District of Arizona, at Lukeville, Arizona, at Ajo, Arizona, and elsewhere, together with Leticia Carrasco-Saavedra, who was named as a conspirator but not as a defendant, and various other persons whose names are and were unknown to the Grand Jurors, and that they did wilfully and knowingly combine, conspire, confederate and agree together to violate Section 176a of Title 21, United States Code; that it was a part of said conspiracy that Mott would fraudulently and knowingly import and bring approximately 542 pounds of marihuana into the United States of America from Mexico, contrary to law; that it was a further part of said conspiracy that Mott would wilfully and knowingly receive, conceal, buy, sell, and facilitate the transportation, concealment and sale of approximately 542 pounds of marihuana, after the said marihuana had been imported and brought into the United States of America, knowing the same had been imported and brought into the United States of America contrary to law; that it was a further part of the conspiracy that Mott would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of his activities; that in furtherance of the conspiracy and to effect the objects thereof, the following overt acts were committed:

"1. That on or about the 22nd day of February, 1966, the said Defendant ROGER COLLINS, also known as LLOYD LESLIE MOTT and also known as LLOYD L. MOTT, did hire a taxi in Ajo, Arizona, to take him to the border at Lukeville, Arizona.

"2. That on or about February 22, 1966, the said Defendant ROGER COLLINS, also known as LLOYD

LESLIE MOTT and also known as LLOYD L. MOTT, did meet with Leticia Carrasco-Saavedra at Room No. 5 of the Ajo Motel, Ajo, Arizona.

"3. That on or about February 23, 1966, the said Defendant ROGER COLLINS, also known as LLOYD LESLIE MOTT and also known as LLOYD L. MOTT, did park his vehicle, a 1960 El Camino Chevrolet automobile, California license No. L50-351, on Highway No. 85, approximately six miles North of Ajo, Arizona, at about 2:00 o'clock p.m., and did enter a vehicle driven by Leticia Carrasco-Saavedra.

"4. That on or about February 24, 1966, the said Leticia Carrasco-Saavedra entered the United States of America at Lukeville, Arizona, driving a 1960 blue El Camino Chevrolet automobile, bearing California license No. R54-962." (RC Item 1)

On March 21, 1966, Mott, represented by retained counsel, pleaded not guilty (RC Item 9). Trial was set for May 27, 1966 (RC Item 9). Trial was held on May 27, 1966, Chief Judge James A. Walsh presiding, and the jury returned a verdict of guilty (RC Item 2). On June 1, 1966, Mott filed a Motion for New Trial (RC Item 9).

On June 6, 1966, the Motion for New Trial was denied, judgment of conviction was entered, and Mott was sentenced to ten years (RC Item 3). On the same date, the Court found Mott to be in forma pauperis and entered an Order that the Appeal may proceed in forma pauperis (RC Item 9).

On June 8, 1966, the Notice of Appeal was filed (RC Item 4).

This Appeal is pursuant to 28 U.S.C.A., § 1291.

II.

STATEMENT OF FACTS

Paul Colarich, a resident of Ajo, Arizona, was the owner of a retail home and auto supply service station and taxi franchise (RT 17 L 10-17). On February 22, 1966, at about 8:15 a.m., Mott came to his place of business and inquired about obtaining a taxi for a trip to Lukeville, how to obtain the cab, and the time involved (RT 18 L 5-9). Mott left, but phoned in about fifteen minutes and requested the cab to come to Number 5 at the Ajo Motel (RT 18 L 13-21).

Mott had a vehicle when he came to Colarich's place of business (RT 20 L 23-25). It was a blue Chevrolet El Camino with California plates (RT 21 L 1-4). Colarich had the driver bring the taxi in to be checked prior to making the trip and then called the Sheriff's Office (RT 18-19).

Theresa Dolson, the owner of the Ajo Motel in Ajo, Arizona, identified Mott as Roger Collins, who registered (Government's Exhibit 1 in Evidence) into Room 5 of the Ajo Motel at about 8:30 a.m. on February 22, 1966, and who, in about fifteen minutes, had her summon a taxi for him (RT 21-23). Mott was driving a blue ranch wagon with California license number L50-351, which was described on the Ajo Motel registration card (RT 23 L 13-16).

Joan LeGendre, the taxi driver employed by Paul Colarich, picked up Mott at Room 5 of the Ajo Motel and drove him to Lukeville, Arizona, which is approximately forty-two miles from Ajo on the Mexican Border (RT 29-32). On the way he talked of opening an electrical shop in Ajo (RT 31). Mott stated he had never been to Mexico before (RT 32). They arrived about 10:00 a.m. (RT 32 L 17-18). Mrs.

LeGendre let him off near a little grocery store on the American side (RT 32 L 12-15). On her way back to Ajo she was stopped by Lt. Tom Cromwell about two miles North of Lukeville, and she talked to him concerning her passenger (RT 32 L 22 to 33 L 7; 71 L 18-20).

Willis Ramsey, a U. S. Customs Inspector, recalled a man asking permission to enter Mexico, and shortly thereafter Lt. Tom Cromwell of the Sheriff's Office arrived and questioned him concerning this man (RT 61 L 1-16; 71 L 21 to 72 L 8).

At approximately 4:30 p.m. on February 22, 1966, Leticia Saavedra drove a blue El Camino Chevrolet with California plates into Carney Motors in Ajo, Arizona, to have it repaired (RT 33-35). She asked Virgil Downey to drive her to the Ajo Motel and he did (RT 35). He described her as having black hair, dark complexion, etc., (RT 35 L 16-19).

At about 5:00 p.m. Mrs. Dolson saw a young woman with dark hair (RT 28 L 17-20) alight from a truck from the garage in town and go into Room 5 at the Ajo Motel (RT 24 L 13-16). Later Mott went into the motel office to ask Mrs. Dolson what the check-out time was, and Mott informed her he had to leave that evening, but would be back to get his things the next morning (RT 24 L 23 to 25 L 3). Lt. Cromwell followed Mott, who left the Motel that evening in his blue El Camino proceeding North on the highway toward Gila Bend; Cromwell stopped following Mott at the county line (RT 73 L 1-25).

On the following day, February 23, 1966, Deputy Sheriff Carlton Oglesby saw Leticia Saavedra in downtown Ajo, and she spoke to him, asking for information (RT 43-45). Later that day, at about 1:00 p.m., Oglesby passed Saavedra, who was in a black '53 or '54 Chevrolet on Highway 85 headed North (RT 45-46). Oglesby met Cromwell and Border Patrol-

man Chuck Seaver on Highway 85 about four miles North of Ajo (RT 46). Oglesby, traveling in an unmarked car, saw this car parked next to a blue El Camino on the South side of Airport Road, which was off of Highway 85 (RT 46-47). Oglesby could recognize Saavedra in the driver's seat, but could not see the passenger clearly enough, except that he could see it was a man (RT 47).

Lt. Tom Cromwell, who had been alerted that Mott had checked out of the motel, with the Border Patrol Officer, had seen Mott in a blue El Camino turn off of Highway 85 and go down Airport Road (RT 74-75; 64-65). When Mott made a sudden U-turn, they did also; Cromwell and Seaver returned to the highway and waited for Oglesby, whom Cromwell had summoned by radio (RT 65 L 14-16; 75). They saw Saavedra in the black '53 or '54 Chevrolet turn off on to Airport Road (RT 65). Oglesby, as described above, saw the two cars and reported it by radio to them. Cromwell and Seaver left the area and went to a point eleven miles South of Ajo, which was on the highway leading to Lukeville (RT 77; 65). They saw Leticia Saavedra pass in the black '53 or '54 Chevrolet and followed her at a distance and eventually saw her enter Mexico at Lukeville (RT 65-66; 77-78).

Oglesby had seen the blue El Camino leave Airport Road and head North on Highway 85 in the direction of Gila Bend (RT 48).

On the following day, February 24, 1966, Lt. Tom Cromwell received a radio call at about 9:30 in the morning from the Border Patrol in Gila Bend, and as a result of that radio call, sent Mr. Johnson Payne, Chief of Security at the Phelps Dodge Smelter, who had an unmarked car, but which was equipped with a radio, to the area on Airport Road where Saavedra and Mott had met the day before (RT 81-82; 86-87).

Payne approached the area from the other direction, sighted the El Camino, and radioed back to the Sheriff's Office (RT 82; 86-87). Payne identified Mott as the man he saw in the parked El Camino (RT 87 L 20-24). Cromwell later sent a deputy to see if Mott was still parked there (RT 82).

At approximately 10:30 a.m. that same morning Leticia Saavedra entered the United States from Mexico in a blue El Camino with California license number R54-962 (RT 52). The El Camino was searched and 249 packages, containing 542 pounds of marihuana, were removed from the El Camino's side panels, from behind the driver's seat and from beneath the truck bed (RT 52-55; 59-61); the amount and contents of the El Camino were stipulated to by Mott (RT 100-101).

Some time that day Mott checked with Mrs. Dolson if he had had any messages (RT 26 L 15-18).

Mott was arrested at about 1:30 that afternoon in Gila Bend, Arizona, which is some forty miles from Ajo (RT 63).

Customs Agents from Nogales, which is approximately 225 miles from Lukeville, were summoned there and took custody of Leticia Saavedra and took her to Gila Bend (RT 102-103). They parked outside Border Patrol Headquarters, and Mott came out of the building in the custody of Customs Agents (RT 103). Saavedra, on seeing Mott, started crying and nodded her head (RT 103).

Customs Agent Henry Washington identified paint samples and samples of the upholstery of the two El Camino's, Government's Exhibits 2 and 5 (RT 105). The cars were identical, except for the license numbers, but both cars had California plates (RT 106).

Lukeville is a small town of some thirty people and is in an isolated area (RT 52). Customs Inspector Wolford knew

Leticia Saavedra as a Mexican alien who frequently entered the United States at Lukeville and who frequently drove a black '53 or '54 Chevrolet (RT 53; 56).

III.

OPPOSITION TO SPECIFICATION OF ERROR

The refusal to grant Appellant's Motion for Judgment of Acquittal on the ground there was not independent proof of the conspiracy was not error.

IV.

ARGUMENT

Once there is sufficient evidence to establish a conspiracy, evidence of a defendant's connection with it may be slight.

Appellant argues in his Brief that there was no proof *aliunde* of the existence of a conspiracy, citing cases and among them *Hitchman Coal and Coke Company v. Mitchell*, (1917), 245 U.S. 229, 38 S.Ct. 65, 62 L.Ed. 260. The Supreme Court held at page 249 that acts of other conspirators can be used to establish a conspiracy, but not the illegality of it. As the Court stated at the time the evidence was being offered of the seizure of the marihuana at page 54 of the Reporter's Transcript:

"THE COURT: Well, for the record the Court feels the foundation has been established, and the objection is overruled."

Evidence of a conspiracy must perforce be mainly circumstantial. *Diaz-Rosendo v. United States*, (9th Cir., 1966),

357 F.2d 124, at p. 129. Once a conspiracy is established little evidence is needed to connect the defendant to it. *Diaz-Rosendo v. United States*, supra, at p. 130.

As the Court stated in denying Mott's Motion for Judgment of Acquittal, after pointing out Mott's use of a false name, Roger Collins, at page 113 of the Reporter's Transcript at lines 4 through 21:

"THE COURT: Well, he's down in this remote area, he's engaged in these meetings with this young citizen from the Lukeville area who has passed in and out of the United States before. There's this remarkable two coincidents of two almost identical automobiles, there's the visit at his motel, the meeting the next day on the Airport Road where they're together, clandestinely, then there is the circumstances of his being in possession of one of the vehicles at a point within the United States and her coming into the United States in the other, one of the vehicles, the one that she's bringing in has a secret compartment, it almost cries out that there's an arrangement to swap vehicles when she gets into the United States and let her return with the other.

"You don't have to show that people met or agreed, you don't have to have a witness that heard them say, 'We'll do this, we won't do that.' Conspiracy may be shown by circumstances, and I think it's clearly shown here. I think the jury can very readily find it."

The Court, in instructing the jury, stated at page 127 of the Reporter's Transcript:

"A conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose. Thus a conspiracy is a kind of partnership in criminal purpose in which each member backs the acts of the other member. The gist of the offense is a combination or agreement to violate the law. Mere similarity or conduct among various defendants and the fact that

they may have associated with each other and may have assembled together, discussed common aims and interests does not necessarily establish the existence of a conspiracy. In order to establish proof of a conspiracy the evidence need not show that the parties to the conspiracy entered into any express or formal agreement, or that they directly by words or in writing stated between themselves what an object or a purpose was to be, or the details thereof or the means by which the object was to be achieved. It is sufficient if they in any way or manner or through any contrivance, positively or passively came to a mutual understanding to accomplish a common and unlawful design. In other words, when an unlawful end is sought to be accomplish (sic) and two or more persons actuate it by a common purpose of accomplishing that end, work together understandingly in furtherance of the unlawful scheme, such persons may have been said to have formed a conspiracy.

"One knowing the purpose of a conspiracy may become a member of the conspiracy though he is without full knowledge of all the details of the conspiracy, such as the membership of the conspiracy, the part to be played by each member or the division to be made from the proceeds of the conspiracy. On the other hand, a person who has no knowledge of a conspiracy but happens to act in a way which furthers an object or purpose of the conspiracy does not thereby become a conspirator. The mere fact that an accused may have engaged in the performance of any of the acts charged in the indictment as overt acts would not itself alone authorize a conviction by reason of that fact, but it is necessary to prove that he was a party to the conspiracy before his guilt of the charge can be made out.

"Before a jury may find that a defendant or any other person has become a member of a conspiracy the evidence must show that the conspiracy was formed and that the defendant or other person who was claimed to have been a member knowingly and wilfully participated

in the unlawful plan for the intent to advance or further some object or purpose of the conspiracy. To participate knowingly and wilfully means to participate voluntarily and understandingly and with specific intent to do some act the law forbids as charged in the indictment. So if a defendant or any other person with understanding of the unlawful character of the plan intentionally encourages, advises or assists for the purpose of furthering the understanding or scheme, he thereby becomes a knowing and wilfull participant, a conspirator.

"A person cannot be convicted of guilty participation in a conspiracy on the basis of acts innocent in themselves, unless the proof of the government has convinced you beyond a reasonable doubt that such person had guilty knowledge that what he was doing was in furtherance of the enterprise charged in the indictment.

"A defendant's mere knowledge of the existence of a conspiracy or his approval or acquiescence in the object or purpose of the conspiracy, without an intention or agreement on his part to cooperate to accomplish such object or purpose is insufficient to constitute such person a conspirator.

"In determining whether or not a defendant was a member of a conspiracy, as to that particular element, you must do so without regard to an independence of the statement and declaration of others. In other words, you must determine the membership of the defendant from the evidence concerning his own action, his own conduct, his own declarations, his own statements and his own connection with the acts and conduct of others.

"If and when it appears from the evidence that a conspiracy existed and that the defendant was one of the members, then the acts thereof knowingly done and statement thereof knowingly made by any person likewise a member may be considered by the jury as evidence in the case as to the defendant found to be a member, even though the facts may have occurred in the absence and

without the knowledge of the defendant, provided, of course, that the acts and statements were knowingly done and made during the continuance of the conspiracy and in furtherance of an object or purpose of the conspiracy.”

(This quotation does not include all of the Court’s instruction on conspiracy.)

It is respectfully submitted this is a correct statement of the law. *Marino v. United States*, (9th Cir., 1937), 91 F.2d 691.

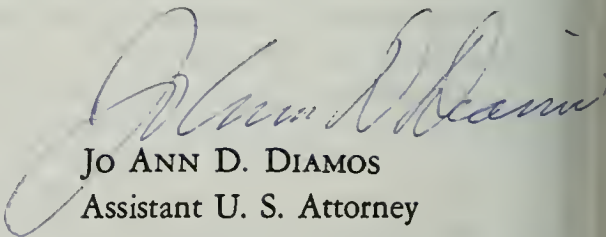
V.

CONCLUSION

There was sufficient evidence of the conspiracy, and then of Appellant’s participation in it, to submit the case to the jury.

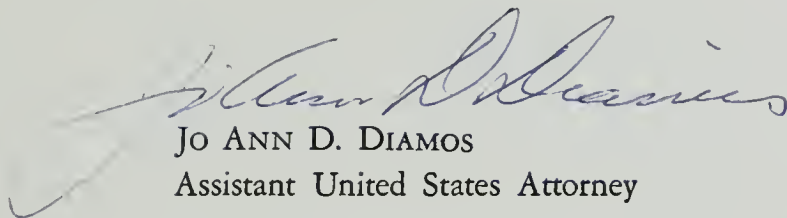
Respectfully submitted,

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I certify that, in connection with the preparation of this Brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion, the foregoing Brief is in full compliance with those rules.



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Three copies of the within Brief of Appellee mailed this
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